

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1445 Employee Organizations Representing Public Employees

SPONSOR(S): Black

TIED BILLS: IDEN./SIM. BILLS: CS/SB 256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee		Villa	Miller
2) State Affairs Committee			

SUMMARY ANALYSIS

Collective bargaining is a constitutional right afforded to public employees in Florida. As such, public employees have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from such activities. An employee organization authorized to represent public employees in collective bargaining is known as a certified bargaining agent. In order to become a certified bargaining agent, the employee organization must register with and be certified by the Public Employees Relations Commission (PERC). A registration granted to an employee organization is valid for one year and must be renewed annually. A certified bargaining agent may have its dues and uniform assessments deducted from the salaries of employees who authorize such a deduction.

Beginning July 1, 2023, the bill requires a public employee who desires to join an employee organization to sign and date a membership authorization form, which must contain certain information. An employee organization is required to revoke an employee's membership upon the employee's written request and may not limit an employee's right to revoke membership to certain dates. If the employee must complete a form to request membership revocation, the form may not require the employee to provide a reason for that decision. An employee organization must retain all membership authorization forms and requests for revocation.

Beginning July 1, 2023, the bill prohibits an employee organization that has been certified as a bargaining agent for a unit of public employees from having its dues and uniform assessments deducted from the salaries of employees in the unit and collected by the employer.

Beginning October 1, 2023, the bill makes certain changes to the employee organization registration and registration renewal process, including requiring an employee organization to include in its initial registration a pledge that the salary of its officials will not exceed the highest salary of any employee member in its organization. The bill requires an employee organization certified to represent public employees to include certain membership information and verification documentation in its registration renewal application. If an application is incomplete, PERC must notify the employee organization and the organization has 10 days to include the missing information, otherwise the application will be dismissed. The bill authorizes a public employer or a bargaining unit employee to challenge an employee organization's registration renewal application. If the dues paying membership of a certified bargaining agent drops below 60 percent of the employees eligible for representation during its last registration period, the bill requires the employee organization to petition PERC for recertification.

The bill prohibits an employee organization from distributing literature during working hours in areas where the actual work of public employees is performed.

The foregoing provisions do not apply to an employee organization that has been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters. However, every employee organization representing public employees must provide its members with an annual audited financial report and include an annual audited financial statement in its registration renewal application. In addition, every employee organization is prohibited from offering certain gifts or other compensation to public officers.

The bill may have a fiscal impact on state and local government, as well as the private sector. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Right-to-Work

The State Constitution provides that Florida is a right to work state; therefore, the right of an individual to work cannot be denied or abridged based on membership or non-membership in any employee organization.¹ As such, public employees² have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.³

Collective Bargaining

Collective bargaining is a constitutional right afforded to public employees in Florida.⁴ To implement this constitutional provision, the Legislature enacted ch. 447, F.S., which provides that the purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.⁵ Through collective bargaining, public employees collectively negotiate with their public employer⁶ in the determination of the terms and conditions of their employment.⁷ The Public Employees Relations Commission (PERC) is responsible for assisting in resolving disputes between public employees and public employers.⁸

An “employee organization” is any “labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.”⁹ An employee organization that is authorized to represent public employees in collective bargaining is known as a certified bargaining agent.¹⁰ A certified bargaining agent is the exclusive representative of all employees in that bargaining unit.^{11,12}

¹ Art. I, s. 6, FLA. CONST.

² S. 447.203(3), F.S., defines the term “public employee” to mean any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
 - 1. Federal license requirement.
 - 2. Federal autonomy regarding investigation and disciplining of appointees.
 - 3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the Public Employees Relations Commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the university.

³ S. 447.301(1) and (2), F.S.

⁴ Art. I, s. 6, FLA. CONST.

⁵ S. 447.201, F.S.

⁶ S. 447.203(2), F.S., defines the term “public employer” to mean the state or any county, municipality, or special district or any subdivision or agency thereof that the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer.

⁷ S. 447.301(2), F.S.

⁸ S. 447.201(3), F.S.

⁹ S. 447.203(11), F.S.

¹⁰ S. 447.203(12), F.S., defines the term “bargaining agent” to mean the employee organization which has been certified by PERC as representing the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative.

¹¹ S. 447.307(1), F.S.

¹² S. 447.203(8), F.S., defines the term “bargaining unit” to mean either that unit determined by PERC, that unit determined through local regulations, or that unit determined by the public employer and the public employee organization and approved by the commission

Registration of an Employee Organization

An employee organization seeking to become a certified bargaining agent for a unit of public employees must register with and be certified by PERC. To register, the employee organization must submit an application, under oath, to PERC that includes the following information:

- The name and address of the organization and of any parent organization or organization with which it is affiliated.
- The names and addresses of the principal officers and all representatives of the organization.
- The amount of the initiation fee and of the monthly dues that members must pay.
- The current annual financial statement of the organization.
- The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached.
- A pledge, in a form prescribed by PERC, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin.
- A copy of the current constitution and bylaws of the employee organization.
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated.¹³

A registration granted to an employee organization is valid for one year and must be renewed annually.¹⁴ The renewal application must reflect any changes to the information provided to PERC in the preceding application and must include a current annual financial report, signed by its president and treasurer (or corresponding principal officers), that contains the following information:

- Assets and liabilities at the beginning and end of the fiscal year.
- Receipts of any kind and the sources thereof.
- Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and each employee who, during such fiscal year, received more than \$10,000 in the aggregate from the employee organization and any other affiliated employee organization.
- Direct and indirect loans made to any officer, employee, or member that aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment.
- Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.¹⁵

Certification of an Employee Organization

After registering with PERC, an employee organization may begin the certification process. In order to be certified, an employee organization selected by a majority of the employees in a unit as their representative must first request recognition by the public employer.¹⁶ If satisfied as to the majority status of the employee organization and the appropriateness of the proposed unit, the employer will recognize the employee organization as the collective bargaining representative for that unit.¹⁷ Following recognition by the employer, the employee organization must immediately petition PERC for certification.¹⁸ If the unit proposed by the employee organization is deemed appropriate, PERC will immediately certify the employee organization as the exclusive representative of all employees in the unit.¹⁹

to be appropriate for the purposes of collective bargaining. However, no bargaining unit may be defined as appropriate, which includes employees of two employers that are not departments or divisions of the state, a county, a municipality, or other political entity.

¹³ S. 447.305(1), F.S.

¹⁴ S. 447.305(2), F.S.

¹⁵ *Id.*

¹⁶ S. 447.307(1)(a), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

However, if the employer refuses to recognize the employee organization, the employee organization must file a petition with PERC that is accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit, indicating that such employees desire to be represented by the employee organization.²⁰ If PERC finds the petition to be sufficient, it must order an election by secret ballot to determine whether the employee organization will be certified.²¹ The petitioning employee organization is placed on the ballot along with any other registered employee organization that submits dated statements signed by at least 10 percent of the employees in the proposed unit, indicating their desire to be represented by that employee organization.²² When an employee organization is selected by a majority of the employees voting in an election, PERC must certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.²³ PERC may pass on the cost of the election to the public employer and employee organization.²⁴

An employee or group of employees who no longer desires to be represented by the certified bargaining agent may file with PERC a petition to revoke certification. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees no longer desire to be represented by the certified bargaining agent. If PERC finds the petition to be sufficient, it must immediately order an election by secret ballot. If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.²⁵

K-12 Instructional Personnel

An employee organization that has been certified as the collective bargaining agent for a unit of K-12 instructional personnel²⁶ must include certain statistics in its application for renewal of registration, including the number of employees who are represented by the employee organization, the number of members who pay dues, and the number of members who do not pay dues.²⁷ If the employee organization's dues-paying membership for a unit of K-12 instructional personnel is less than 50 percent of the employees eligible for representation in the unit, the organization must petition PERC for recertification as the exclusive representative of all employees in the unit within a certain time. If the certified employee organization does not comply with the recertification requirements or if it does not include the required information in its application for registration renewal, the organization's certification for the unit is revoked.²⁸

Employee Dues

²⁰ S. 447.307(2), F.S.

²¹ S. 447.307(3)(a), F.S.

²² S. 447.307(2), F.S.

²³ S. 447.307(3)(b), F.S.

²⁴ See s. 447.307(3)(a), F.S.; see also R. 60CC-2.006, F.A.C.

²⁵ S. 447.308, F.S.

²⁶ S. 1012.01(2), F.S., defines the term "instructional personnel" to mean any K-12 staff member whose function includes the provision of direct instructional services to students and includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel:

- Classroom teachers: Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.
- Student personnel services: Student personnel services include staff members responsible for advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions.
- Librarians and media specialists: Librarians and media specialists are staff members responsible for providing school library media services.
- Other instructional staff: Other instructional staff are staff members who are part of the instructional staff but are not classified in one of the categories specified above.
- Education paraprofessionals: Education paraprofessionals are individuals who are under the direct supervision of an instructional staff member, aiding the instructional process.

²⁷ S. 1012.2315(4)(c)1., F.S.

²⁸ S. 1012.2315(4)(c)2., F.S.

A certified bargaining agent may have its dues and uniform assessments deducted and collected by the public employer from the salaries of those employees who authorize the deductions.²⁹ Such authorization is revocable by the employee upon 30 days' written notice to the employer and employee organization.³⁰ The deductions commence upon the bargaining agent's written request to the employer.³¹ The right to deductions remains in force for as long as the employee organization remains the certified bargaining agent for that group of employees.³²

According to the Department of Management Services, 67,220 state employees (excluding state university system employees) were represented by unions during Fiscal Year 2020-2021. Of these employees, 9,384 paid union dues and assessments.³³ Local government union membership levels are unknown.

Employee Organization Unlawful Act

In Florida, an employee organization, its members, agents, representatives, or any other person acting on its behalf, is prohibited from committing the following acts:

- Soliciting public employees during the working hours of any employee involved in the solicitation.
- Distributing literature during working hours in areas where the actual work of public employees is performed, such as offices, warehouses, schools, police stations, fire stations, and any similar public installations. However, employee organizations are not prohibited from distributing literature during the employee's lunch hour or in areas not specifically devoted to the performance of the employee's official duties.
- Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students during classroom time.
- Paying fines or penalties assessed against individuals pursuant to the foregoing prohibitions.³⁴

These prohibitions may be enforced in the circuit courts through injunctions and contempt proceedings. Public employers are authorized to discharge or otherwise discipline any employee convicted of violating these prohibitions, notwithstanding any other statutory or collective bargaining agreement provision.³⁵

Code of Ethics for Public Officers and Employees

A public officer,³⁶ an agency employee, a local government attorney, or a candidate for nomination or election is prohibited from soliciting or accepting anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based on any understanding that the vote, official action, or judgement of the public officer, employee, local government attorney, or candidate would be influenced thereby.³⁷ In addition, a public officer, agency employee, or local government attorney, or his or her spouse or minor child, is prohibited from accepting any compensation, payment, or thing of value when the public officer, agency employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or attorney was expected to participate in his or her official capacity.³⁸

²⁹ S. 447.303, F.S.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ State Personnel System, *Annual Workforce Report for Fiscal Year 2020-2021*, page 20, <https://www.dms.myflorida.com/content/download/158111/1047486/FY2020-21AnnualWorkforceReport-FINAL.pdf> (last visited March 4, 2023).

³⁴ S. 447.509(1) and (2), F.S.

³⁵ S. 447.509(3), F.S.

³⁶ "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body. S. 112.313(1), F.S.

³⁷ S. 112.313(2), F.S.

³⁸ S. 112.313(4), F.S.

The Commission on Ethics (Commission) has jurisdiction to investigate an alleged violation of these provisions.³⁹ Pursuant to a finding of wrongdoing, the Commission may recommend appropriate action to the agency or official having power to impose penalties.⁴⁰ Penalties for public officers include impeachment, removal from office, suspension from office, public censure and reprimand, forfeiture of a portion of salary for a time period, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received because of the violation committed.⁴¹

In addition, bribery is punishable as a second-degree felony.⁴² “Bribery” means to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.⁴³

Effect of the Bill

Membership Authorization

Beginning July 1, 2023, the bill requires a public employee who desires to be a member of an employee organization to sign and date a membership authorization form, as prescribed by PERC, that contains the following statement in 14-point type:

The State of Florida is a right-to-work state. Membership or non-membership in a labor union is not required as a condition of employment, and union membership and payment of union dues and assessments are voluntary. Each person has the right to join and pay dues to a labor union or to refrain from joining and paying dues to a labor union. No employee may be discriminated against in any manner for joining and financially supporting a labor union or for refusing to join or financially support a labor union.

The membership authorization form must also identify the:

- Name of the bargaining agent;
- Name of the employee;
- Class code and class title of the employee;
- Name of the public employer and employing agency, if applicable;
- Amount of the initiation fee; and
- Amount of monthly dues, which the member must pay.

The bill requires an employee organization to revoke a public employee's membership upon receipt of the employee's written request. The bill specifies that a public employee may revoke membership in an employee organization at any time of the year and prohibits an employee organization from limiting an employee's right to revoke membership to certain dates. If the public employee must complete a form to request revocation, the form may not require the employee to provide a reason for that decision.

The bill requires an employee organization to retain the membership authorization forms and any requests for revocation for inspection by PERC.

The bill provides that these provisions do not apply to members of an employee organization that has

³⁹ S. 112.322(1), F.S.

⁴⁰ S. 112.322(2)(b), F.S.

⁴¹ S. 112.317(1)(a), F.S.

⁴² S. 838.015(3), F.S. A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

⁴³ S. 838.015, F.S.

been certified as a bargaining agent to represent law enforcement officers,⁴⁴ correctional officers,⁴⁵ correctional probation officers,⁴⁶ or firefighters.⁴⁷

The bill authorizes PERC to adopt rules to implement these provisions.

Employee Dues

Beginning July 1, 2023, the bill prohibits an employee organization that has been certified as a bargaining agent for a unit of public employees from having its dues and uniform assessments deducted from the salaries of employees in the unit and collected by the employer. However, public employees may pay their dues and uniform assessments directly to the employee organization that has been certified as their bargaining agent.

The prohibition on the deduction and collection of dues and uniform assessments by a public employer does not apply to an employee organization that has been certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters.

Registration of an Employee Organization

Beginning October 1, 2023, the bill makes certain changes to the employee organization registration and registration renewal process. The bill requires an employee organization seeking to become a certified bargaining agent to include in its registration with PERC a pledge, in a form prescribed by the commission, that the annual salary of an official of the employee organization will not exceed the highest salary of any employee member in its organization.

The bill requires an employee organization that has been certified as the bargaining agent for a unit of public employees to include the following information and documentation as of the 30th day immediately preceding the date of renewal in its registration renewal application:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization and documentation provided by the public employer verifying such information.
- The number of employees who have submitted signed membership authorization forms without a subsequent revocation of such membership and documentation provided by an independent certified public accountant retained by the employee organization verifying such information.
- The number of employees in the bargaining unit who paid dues to the employee organization and documentation provided by an independent certified public accountant retained by the employee organization verifying such information.
- The number of employees in the bargaining unit who did not pay dues to the employee organization and documentation provided by an independent certified public accountant retained by the employee organization verifying such information.

⁴⁴ "Law enforcement officer" is defined to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. S. 943.10(1), F.S.

⁴⁵ "Correctional officer" is defined to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. S. 943.10(2), F.S.

⁴⁶ "Correctional probation officer" is defined to mean a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level. S. 943.10(3), F.S.

⁴⁷ "Firefighter" is defined to mean an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services. S. 633.102(9), F.S.

The bill requires an employee organization to provide a copy of its application for renewal of registration to the applicable public employer on the same day the application is submitted to PERC.

An application for registration renewal that does not include all of the required information and documentation is considered incomplete and is not eligible for consideration. The bill requires PERC to notify an employee organization if its application is incomplete. If PERC does not receive the missing information or documentation within 10 days after the employee organization receives the commission's notice, PERC must dismiss the incomplete application.

If an employee organization had less than 60 percent of the employees eligible for representation in the bargaining unit pay dues during its last registration period, the bill requires such organization to petition PERC for recertification as the exclusive representative of all employees in the bargaining unit within one month after the date on which the employee organization applies for registration renewal. The certification of an employee organization that does not comply with this recertification requirement is revoked.

The bill authorizes a public employer or bargaining unit employee to challenge an employee organization's registration renewal application if the employer or employee believes that the application is inaccurate. PERC or one of its designated agents must then review the application to determine its accuracy and compliance with the registration renewal requirements. If PERC finds that the application is inaccurate or does not comply with such requirements, the commission must revoke the employee organization's registration and certification.

The bill authorizes PERC to conduct an investigation to confirm the validity of any information submitted pursuant to the registration and registration renewal process. PERC may revoke or deny an employee organization's registration or certification if it finds that the employee organization failed to cooperate with the investigation or intentionally misrepresented the information submitted pursuant to the foregoing registration renewal requirements. Such action is considered final agency action and is judicially reviewable.

The bill provides that these provisions do not apply to an employee organization that has been certified as the bargaining agent representing law enforcement officers, correctional officers, correctional probation officers, or firefighters.

Annual Audited Financial Statements

The bill requires an employee organization seeking to become a certified bargaining agent to include in its initial registration with PERC its current annual audited financial statement. In addition, the bill requires the annual financial report, which is currently required to be included in an employee organization's annual registration renewal application, to be an audited financial statement certified by an independent certified public accountant licensed in Florida.

The bill requires an employee organization certified as a bargaining agent to provide its members with an annual audited financial report that includes a detailed breakdown of revenues and expenditures and an accounting of membership dues and assessments, and to notify its members annually of all costs of membership.

Employee Organization Unlawful Acts

The bill prohibits an employee organization, its members, agents, representatives, or any other person acting on its behalf from distributing literature in areas where the actual work of public employees is performed, such as offices, warehouses, schools and any similar public installations. However, law enforcement officers, correctional officers, correctional probation officers, or firefighters may still distribute literature during nonwork hours in such areas.

The bill prohibits an employee organization, its members, agents, representatives, or any other person acting on its behalf from offering any compensation, payment, or thing of value to a public officer⁴⁸ which the public officer is prohibited from accepting under the Code of Ethics.⁴⁹

B. SECTION DIRECTORY:

Section 1 amends s. 447.301, F.S., relating to public employee's rights; organization and representation.

Section 2 amends s. 447.303, F.S., relating to dues; deduction and collection.

Section 3 amends s. 447.305, F.S., relating to registration of employee organization.

Section 4 amends s. 447.509, F.S., relating to other unlawful acts.

Section 5 amends s. 1012.2315, F.S., conforming provisions to changes made by the act.

Section 6 reenacts s. 110.114, F.S., relating to employee wage deductions.

Section 7 reenacts s. 447.507, F.S., relating to violations of strike prohibition; penalties.

Section 8 provides an effective date of upon becoming law, except as otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, negative fiscal impact on certain employee organizations related to the recertification and dues collection process.

D. FISCAL COMMENTS:

The bill will likely have an indeterminate, but likely insignificant, negative fiscal impact on state and local government expenditures.

⁴⁸ "Public officer" is defined under s. 112.313(1), F.S., incorporated into the bill, to include any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

⁴⁹ The Code of Ethics prohibits a public officer from accepting any compensation, payment, or thing of value which the public officer knows, or, with the exercise of reasonable care, should know, or acceptance would be based on the understanding that, it was given to influence the vote, official action, or judgement of the public officer thereby. See S. 112.313(2) and (3), F.S.

The bill requires certain employee organizations with less than 60 percent of the eligible employees in the unit paying union dues to recertify with PERC. The dollar amount of expenditures required by the bill depends on the amount of elections that will need to be held pursuant to the recertification process, and in the case of local governments, the amount of reimbursement required by PERC. PERC estimates the following need for additional resources if there is an increase in the number of recertification petitions filed with PERC, or if more elections must be held during the recertification process:⁵⁰

2 Hearing Officers	Salaries and Benefits	\$302,707
2 Elections Specialists	Salaries and Benefits	\$178,920
2 Administrative Assistants III	Salaries and Benefits	\$126,735
3 OPS full time at \$20.00/hr.	40 hours/week	\$124,800
Expense package Professional	\$11,051 x 6	\$66,306
Expense package support staff	\$9,590 x 3	\$28,770
<u>Anticipated travel cost increase</u>		<u>\$75,000</u>
Total estimated staffing cost:		\$903,238

The bill will also likely have an insignificant, negative short-term, but insignificant, positive long-term, fiscal impact on state and local government expenditures. The bill prohibits certain employee organizations from having dues and uniform assessments deducted from the salaries of employees in the unit and collected by the employer. Accordingly, public employers will likely experience a short-term increase in workload associated with eliminating any payroll deductions that will no longer be authorized under the bill. In the long term, however, the reduced amount of authorized payroll deductions will result in a decreased workload for public employers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill prohibits payroll deductions for union dues which will require local governments to incur additional workload to comply with the changes in the payroll deduction process. However, the additional workload should be absorbed within current resources. In addition, the bill requires certain employee organizations to recertify with PERC in certain instances. This recertification process could result in minimal costs to local governments related to recertification elections; however, those costs will likely be insignificant. As such, an exemption may apply because the costs associated with the bill appear to be insignificant.

2. Other:

As provided in the State Constitution, Florida is a right to work state.⁵¹ The Florida Supreme Court recognized that public employees have the same constitutional rights to bargain collectively as private employees possess, excluding the right to strike.⁵² As part of the State Constitution's declaration of rights, the right to collectively bargain is considered a fundamental right that may be abridged only upon the showing of a compelling state interest.⁵³

⁵⁰ See Public Employees Relations Commission, Agency Analysis of 2023 SB 256 (March 3, 2023), on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

⁵¹ "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike." Art. I, s. 6, Fla. Const.

⁵² *Dade County Classroom Teachers Ass'n. v. Ryan*, 225 So.2d 903 (Fla.1969).

⁵³ See *Coastal Fla. Police Benevolent Ass'n, Inc. v. Williams*, 838 So. 2d 543, 548 (Fla. 2003)

The United States Supreme Court has recognized that it is a fundamental right for employees to self-organize and to select representatives of their own choosing for collective bargaining.⁵⁴ In addition, the Court has stated the right of employees “to self-organize and bargain collectively . . . necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite.”⁵⁵

The bill requires officials of certain employee organizations to pledge to a salary cap and restricts certain employee organizations’ ability to distribute literature in the workplace. If these provisions unduly restrict the ability of public employees to be represented by an employee organization of their own choosing and communicate with one another at the jobsite regarding the employee organization, in a challenge to the bill, these provisions would be subject to a strict scrutiny standard and the public employer would be required to show a compelling state interest.

B. RULE-MAKING AUTHORITY:

The bill authorizes PERC to adopt rules to implement the bill’s membership authorization requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁵⁴ See *NLRB v. Jones & Steel Corp.*, 57 S.Ct. 615 (1937).

⁵⁵ *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 491, 98 S. Ct. 2463, 2469, 57 L.ED.2d 370, 380 (1978).